

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**JUDGE KOELTL 09 CV 6832**

PEARSON EDUCATION, INC., :  
JOHN WILEY & SONS, INC., :  
CENGAGE LEARNING INC. AND :  
THE MCGRAW-HILL COMPANIES, INC., :

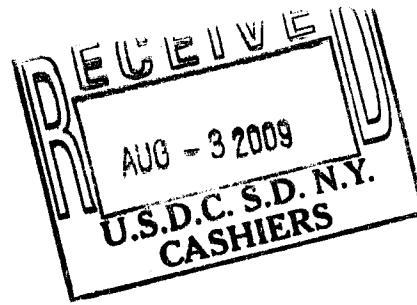
Plaintiffs,

-against-

09 Civ.

MARTHA VERGARA D/B/A TESTBANK :  
GURU D/B/A TEST BANK ZONE AND :  
JOHN DOE NOS. 1-5, :

Defendants.



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COMPLAINT

Plaintiffs Pearson Education, Inc. ("Pearson"), John Wiley & Sons, Inc. ("Wiley"), Cengage Learning Inc. ("Cengage") and The McGraw-Hill Companies, Inc. ("McGraw-Hill"), by their undersigned attorneys, for their complaint against defendants Martha Vergara d/b/a Testbank Guru d/b/a Test Bank Zone and John Doe Nos. 1-5, aver:

Nature of the Action

1. Plaintiffs are bringing this action to obtain legal and equitable relief to remedy defendants' infringement of plaintiffs' copyrights through their sales of copies of instructors' solutions manuals.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the claim in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because it arises under the Copyright Act, 17 U.S.C. § 101 et seq.

3. Upon information and belief, venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(a).

Parties

4. Pearson is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at One Lake Street, Upper Saddle River, New Jersey 07458.

5. Wiley is a corporation organized and existing under the laws of the State of New York with its principal place of business at 111 River Street, Hoboken, New Jersey 07030.

6. Cengage is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 200 First Stamford Place, 4<sup>th</sup> Floor, Stamford, Connecticut 06902.

7. McGraw-Hill is a corporation organized and existing under the laws of the State of New York with its principal place of business at 1221 Avenue of the Americas, New York, New York 10020.

8. Upon information and belief, defendant Martha Vergara is a natural person presently residing at 18100 Atlantic Boulevard, Apartment 307, Sunny Isles Beach, Florida 33160.

9. Upon information and belief, defendants John Doe Nos. 1-5 are natural persons whose identities are presently unknown to plaintiffs.

The Businesses of Plaintiffs

10. Each plaintiff publishes a variety of works, including educational books.

11. As a standard practice, each plaintiff requires its authors to assign the copyrights to them or grant them the exclusive rights of reproduction and distribution in the United States. This practice enables each plaintiff to maximize the dissemination of each work.

12. Plaintiffs invest significant monies to publish their copyrighted works. Plaintiffs, for example, make substantial investments in royalties, content creation, licensing, copyediting, proofreading, typesetting, layout, printing, binding, distribution, and promotion.

13. Plaintiffs earn a substantial portion of their revenue from the publication of their copyrighted works and would suffer serious financial injury if their copyrights were not enforced. A substantial decline in their income could cause plaintiffs to cease publishing one or more deserving books or

journals. This would adversely impact the creation of new works, scholarly endeavor, and scientific progress.

14. An important part of plaintiffs' business is derived from publishing college textbooks. College professors select textbooks from competing publishers based on the pedagogical value and the quality of supplementary materials.

15. Instructors' solutions manuals are important supplementary materials. Professors use instructors' solutions manuals to aid in grading homework. Students, however, use instructors' solutions manuals to cheat. Professors are less likely to select a textbook if the instructors' solutions manuals are freely and/or widely available. Accordingly, plaintiffs do not sell their instructors' solutions manuals, and tightly control their distribution to known faculty.

#### Plaintiffs' Copyrights

16. Plaintiffs routinely register their copyrights. Pearson has generally registered its copyrights in its works, including the works on Schedule A (the "Pearson Copyrights"). Wiley has generally registered its copyrights in its works, including the works on Schedule B (the "Wiley Copyrights"). Cengage has generally registered its copyrights in its works, including the works on Schedule C (the "Cengage Copyrights"). McGraw-Hill has generally registered its copyrights in its works, including the works on Schedule D (the "McGraw-Hill Copyrights").

The Infringing Acts of Defendants

17. Defendants have without permission reproduced and sold copies of plaintiffs' works. Specifically, defendants have reproduced and sold copies of plaintiffs' instructors' solutions manuals through online sales at websites and forums, including but not limited to Testbankzone.com, Topix.com, Google Groups, e-Junkie.com, YouTube.com, and Craigslist.com, using usernames including, but not limited to, Testbank Guru and Test Bank Zone, and e-mail addresses including, but not limited to, zethersss@aim.com , textbankguru@gmail.com, and zer0ness@aim.com.

CLAIM FOR RELIEF

(Copyright Infringement - 17 U.S.C. § 501)

18. Plaintiffs repeat the averments contained in paragraphs 1 through 17 as if set forth in full.

19. Pearson has received United States Certificates of Copyright Registration for the Pearson Copyrights.

20. Wiley has received United States Certificates of Copyright Registration for the Wiley Copyrights.

21. Cengage has received United States Certificates of Copyright Registration for the Cengage Copyrights.

22. McGraw-Hill has received United States Certificates of Copyright Registration for the McGraw-Hill Copyrights.

23. The Pearson, Wiley, Cengage and McGraw-Hill  
Copyrights are valid and enforceable.

24. Defendants have infringed the Pearson, Wiley,  
Cengage and McGraw-Hill Copyrights in violation of 17 U.S.C.  
§ 501.

25. Defendants' acts have irreparably damaged and,  
unless enjoined, will continue to irreparably damage plaintiffs.  
Plaintiffs have no adequate remedy at law for these wrongs and  
injuries. Plaintiffs are, therefore, entitled to a preliminary  
and permanent injunction restraining and enjoining defendants and  
their agents, servants, employees, and attorneys and all persons  
acting in concert with them, from infringing the Pearson, Wiley,  
Cengage and McGraw-Hill Copyrights.

26. Defendants have willfully infringed the Pearson,  
Wiley, Cengage and McGraw-Hill Copyrights.

27. Plaintiffs are entitled to recover all damages  
sustained as a result of defendants' unlawful conduct including  
(1) defendants' profits, or (2) plaintiffs' damages, or  
alternatively (3) statutory damages.

WHEREFORE, plaintiffs demand judgment:

A. Preliminarily and permanently enjoining  
defendants, their agents, servants, employees, and attorneys and  
all those acting in concert with them from infringing the

Pearson, Wiley, Cengage and McGraw-Hill Copyrights in violation of 17 U.S.C. § 501;

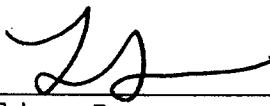
B. Awarding plaintiffs their damages or defendants' profits, or alternatively, at plaintiffs' election, statutory damages, as a result of defendants' willful infringement of the Pearson, Wiley, Cengage and McGraw-Hill Copyrights;

C. Awarding plaintiffs their costs in this action, including their reasonable attorneys' fees pursuant 17 U.S.C. § 505; and

D. Granting such other and further relief as to this Court seems just and proper.

Dated: New York, New York  
August 3, 2009

DUNNEGAN LLC

By 

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Cengage Learning Inc. and

The McGraw-Hill Companies, Inc.

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New York, New York 10118

(212) 332-8300

Schedule A  
"Pearson Copyrights"

Title (Date of Registration) (Registration #)

1. Physics: Principles and Applications: Instructor's Solutions Manual, Fifth Edition, (October 6, 1997) (TX0004640395)
2. Accounting, Seventh Edition, (February 2, 2007) (TX0006522916)
3. Accounting Information Systems, Tenth Edition, (July 12, 2005) (TX0006201168)
4. Auditing and Assurance Services: An Integrated Approach, Twelfth Edition, (April 13, 2007) (TX0006548957)
5. Biology, Sixth Edition, (February 28, 2002) (TX0005482385)
6. Brock Biology of Microorganisms, Tenth Edition, (February 1, 2002) (TX0005564202)
7. Chemistry: The Central Science, Tenth Edition, (March 22, 2005) (TX0006162946)
8. Chemistry: The Central Science, Eleventh Edition, (August 4, 2008) (TX0006862056)
9. Cost Accounting: A Managerial Emphasis, Twelfth Edition, (January 13, 2006) (TX0006311827)
10. E-Marketing, Fifth Edition, (January 7, 2009) (TX0006927628)
11. Essentials of Entrepreneurship and Small Business Management, Second Edition, (August 7, 1997) (TX0004587374)

Schedule B  
"Wiley Copyrights"

Title (Date of Registration) (Registration #)

1. Accounting Principles: Annotated Instructor's Edition. Third Edition (March 10, 1994) (TX-3-750-342)
2. Instructor's Manual for Advanced Engineering Mathematics, Seventh Edition (April 13, 1995) (TX-4-035-055)
3. Calculus: Early Transcendentals, Eighth Edition (March 23, 2005) (TX-6-139-880)
4. Calculus: Multivariable, Fourth Edition (February 7, 2005) (TX-6-128-114)
5. Cell and Molecular Biology: Concepts and Experiments, Fifth Edition (December 27, 2007) (TX-6-929-210)
6. Elementary Linear Algebra, Ninth Edition (February 24, 2005) (TX-6-173-767)
7. Engineering Fluid Mechanics Instructor's Resource CD-ROM, Seventh Edition (January 21, 2005) (TX-6-093-617)
8. Engineering Mechanics: Statics, Solutions Manual CD-ROM, Fifth Edition (January 21, 2005) (TX-6-091-402)
9. Fundamentals of Engineering Thermodynamics: Instructor's Resource CD-ROM (February 25, 2005) (TX-6-147-524)
10. Fundamentals of Physics: Instructor's Solutions Manual Volume 1, Seventh Edition (January 21, 2005) (TX-6-101-287)
11. Fundamentals of Physics: Instructor's Solutions Manual Volume 2, Seventh Edition (January 21, 2005) (TX-6-101-286)
12. Fundamentals of Thermodynamics, Sixth Edition (November 12, 2002) (TX-5-612-550)
13. Intermediate Accounting, Twelfth Edition (August 3, 2006) (TX-6-408-031)
14. Introduction to Electric Circuits, Seventh Edition (April 20, 2006) (TX-6-348-154)
15. Organic Chemistry, Ninth Edition (January 30, 2008) (TX-6-848-333)

Schedule C  
"Cengage Copyrights"

Title    Date of Registration    Registration #

1. Solutions Manual Financial Management: Theory and Practice (April 27, 2007) (TX0006579389).
2. Financial Reporting and Analysis (July 6, 2006) (TX0006438596).
3. Management Testbank (October 15, 1999) (TX0005068423).
4. South-Western Federal Taxation: Comprehensive (November 23, 2003) (TX0005830524)
5. Instructor's solutions manual for Serway and Faughn's College physics (March 4, 2005) (TX0006120946).
6. Organic Chemistry (May 1, 2003) (TX0005747307).
7. Instructor's Solutions Manual for Serway and Jewett's Physics for Scientists and Engineers (August 4, 2004) (TX0006005962).
8. Introduction to Organic Laboratory Techniques: A Microscale Approach (February 23, 2006) (TX0006323891).

Schedule D  
"McGraw-Hill Copyrights"

Title    Registration #    Date of Registration

1. Solutions Manual for use with Corporate Finance, Seventh Edition, (TX0005978276) (June4, 2004).
2. Test Bank to accompany Corporate Finance (TX0005422644) (August 1, 2001).
3. Solutions Manual to accompany Managerial Accounting, Eighth Edition, (TX0004478717) (February 24, 1997).
4. Test Bank to accompany Managerial Accounting, Eleventh Edition, (TX0006080806) (December 9, 2004).
5. Solution Manual with chapter outlines to accompany Advanced Accounting, Fourth Edition, (TX0003788754) (April 7, 1994).
6. Test Bank to accompany Advanced Accounting, Sixth Edition, (TX0005339822) (January2, 2001).
7. Instructor's Manual to accompany Fundamentals of Corporate Finance, Sixth Edition, (TX0006085308) (December 15, 2004).
8. Test bank to accompany Fundamentals of Corporate Finance, Fifth Edition, (TX0005185514) (April 10, 2000).